



SENATE BILL 763: Revenue Laws Technical Changes

2013-2014 General Assembly

Committee: House Finance
Introduced by: Sens. Rabon, Rucho
Analysis of: PCS to Second Edition
S763-CSRBx-69

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SUMMARY: *Senate Bill 763 makes technical corrections and clarifying changes to the tax statutes largely based on recommendations of the Department of Revenue. The House Proposed Committee Substitute adds sections 22 through 25. Of the four changes, only one (Section 24) is substantive.*

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation and Effective Date
1	<p>This section does two things. First, it clarifies that the changes related to retailer-contractors, which become effective January 1, 2015, are not to be construed to affect the interpretation of any statute that is the subject of a State tax audit for taxable years beginning prior to the effective date of the changes. The prior language referred to "audit pending," which the Department indicated was unclear. The changes made by Part VII of S.L. 2014-3 are not intended to be retroactive, and therefore any audit or litigation resulting derived from an audit for taxable years prior to January 1, 2015 is subject to the statutes and interpretations of the Department for those years.</p> <p>Second, it clarifies the effective date by providing that the changes apply to withdrawals from inventory on or after that date as well as sales since retailer-contractors do both; they make retail sales of items and they withdraw items from inventory that are used in the performance of a real property contract.</p>
2	<p>This section clarifies the conditions under which a retailer is or is not liable for the collection of tax on the rental of private residences rented for fewer than 15 days and listed with a real estate broker during the period in which the Department's Important Notice was in effect and during the 30-day period following the effective date of S.L. 2014-3. The original provision was not specific to the private residence changes but generically referred to the entire section, which could have been interpreted to affect the liability of retailers required to collect tax on the rental of accommodations generally.</p> <p>This section becomes effective June 1, 2014.</p>
3	<p>This section repeals an unnecessary provision; Section 14.1 of S.L. 2014-3 made the same change.</p>
4	<p>S.L. 2014-3 enacted a new tax on vapor products as part of the current tax on other tobacco products (OTP). This section makes a technical change that allows North Carolina manufacturers of vapor products to collect the new vapor tax on internet retail sales, while allowing the manufacturers to continue to the current practice of</p>



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	<p>applying to the Secretary of Revenue to be relieved of the tax for vapor products shipped to wholesale and retail dealers. The Secretary allows manufacturers to be relieved of paying the tax on OTP when the tax is paid by the wholesale or retail dealer.</p> <p>This section becomes effective June 1, 2015.</p>
5	<p>This section clarifies that the credit may be taken when the property is placed into service in this State. When a renewable energy project is put together, there are usually two sets of investors, those that want the federal credit and those that want the State credit. If the lessee is to get the federal credit, it must "place it into service". However, if the lessor wants the State credit, it must "place it into service". As clarified by this section, the lessor may claim the State credit, as long as somebody (the lessee) places the property into service.</p>
6	<p>This section incorporates a revision made to G.S. 15-130.5(b)(4) made by Section 14.3 of S.L. 2014-3 so that the changes engross correctly in the codification process.</p>
7	<p>This section clarifies that the phrase "subject to tax under Part 2 or 3 of Article 4" applies to a beneficiary of a transferor.</p> <p>Subsection (a) becomes effective for the 2013 taxable year; subsection (b) becomes effective for the 2014 taxable year.</p>
8	<p>Subsection (a) of this section removes reference to a repealed statute and clarifies in the personal income tax statutes that income of a partnership that is apportionable to multiple states is allocated and apportioned in accordance with G.S. 105-130.4. Income that is not apportionable should be allocated to the appropriate state. The current statute refers to a ratio rather than to the rules of allocation and apportionment.</p> <p>For State income tax purposes, subsection (b) of this section requires S Corps, partnerships, estates and trusts to add back State income tax that was deducted from federal income. Prior to S.L. 2013-316, the statutory requirement for the add-back for S Corporations, partnerships, estates and trusts was a cross reference to the individual requirement. When the individual requirement was repealed, add-back for S Corporations, partnerships, estates and trusts requirement was erroneously repealed as well.¹</p> <p>This section becomes effective for taxable years beginning on or after January 1, 2014.</p>
9	<p>S.L. 2014-3 clarified that a person who is not eligible for a federal standard deduction is not eligible for a State standard deduction. A nonresident alien individual is not allowed a standard deduction. This section provides that neither an individual nor a withholding agent may be penalized for underpayment of income tax for the 2014 taxable year if the reason for the underpayment is this clarification in the law. This section does not change the effective date of the substantive law change or the amount of tax due and payable.</p>

¹ This requirement was repealed for individual filers in S.L. 2013-316, when the itemized and standard deduction was changed for individual filers.

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10	This section clarifies that the term "retailer" is any person required to collect sales tax imposed under G.S. 105-164.4, other than a facilitator. The current definition does not reflect the expansion of the sales tax base to prepaid meal plans, admission charges, piped natural gas, and service contracts.
11	This section makes technical and conforming changes.
12	<p>Subsection (a) of this section clarifies that the exemption provisions applicable to fuel also include piped natural gas. PNG is considered fuel, but since the imposition of the combined rate of tax for PNG is separate from the general tax imposed on fuel, the Department of Revenue requested this clarifying change.</p> <p>Subsection (b) of this section clarifies that the exemption for items used to maintain or repair tangible personal property applies to those items used pursuant to a service contract subject to sales tax. If the service contract is not subject to tax, then the item used to maintain or repair the property is subject to tax. This subsection becomes effective October 1, 2014.</p> <p>Subsection (c) of this section makes a conforming change in Article 5F regarding the treatment of items used in a service contract.</p> <p>Subsection (d) of this section provides that the exemption applies, regardless of when the service contract was purchased. It would be difficult for a person to know, when a service is performed pursuant to a service contract, whether the service contract was purchased before or after January 1, 2014.</p>
13	This section makes a similar clarifying change as made in Section 12(a) of this bill for the farm exemption for fuel and piped natural gas. It also makes other technical changes suggested by the Department of Revenue.
14	<p>This section does two things:</p> <ul style="list-style-type: none">• It provides that a retailer who has an agreement with a food service contractor to collect and remit the sales tax on gross receipts derived from a prepaid meal plan is not liable for the tax that the retailer remits to the food service contractor.• It requires a retailer to report gross receipts derived from a prepaid meal plan on an accrual basis of accounting for purposes of reporting sales tax.
15	This section provides that the changes made by S.L. 2014-3 for sales tax derived from a prepaid meal plan apply to a plan that is sold or billed before July 1, 2014, if the plan cannot be used before August 1, 2014. Many institutions of higher education sold prepaid meal plans for the fall semester before July 1, 2014.
16	This section provides that for sales tax purposes, a retailer must report its gross receipts derived from sales of piped natural gas and prepaid meal plans on an accrual basis, and it states that a sale is considered to accrue when the retailer bills its customers for the sale.
17	This section makes a change as to who may apply for a certificate of registration for legal entity so that it is consistent with the changes made in Section 14.18 of S.L. 2014-3 as to who may be liable for unpaid sales tax for a legal entity.
18	This section changes a statute that was not codified as it was intended to be amended

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	<p>by Section 47 of S.L. 2013-414. The section does not change the substance of the subdivision.</p> <p>The change made last session codified the Department's administrative practice of allowing protective refund claims to be filed when an event prevented a taxpayer from having the information necessary to file a request for refund, such as pending litigation or an ongoing income tax audit in another state that may affect the taxpayer's NC tax liability.²</p>
19	<p>Part XI of S.L. 2014-3 established a procedure for the central assessment of mobile telecommunications property. The intent of this Part was to shift the responsibility for conducting the valuations of this particular kind of property from the individual counties to the Department of Revenue without creating any "winners" or "losers" in terms of the values allocated to the counties. This section makes minor modifications to that Part to ensure that there is no shifting of value among counties as a result of the change.</p> <p>The Department appraises this property at its "true value," which includes consideration of its original cost but with deductions made for all forms of depreciation to arrive at the property's fair market value. However, under S.L. 2014-3, the allocation of the value among the counties in which the property is located would have been based only on original cost. Using original cost would have had the effect of overinflating the value allocated to a particular county and decreasing the value allocated to other counties. This section provides that once the Department determines the value of the property, it will be allocated among the counties based on where the property is located.</p>
20	<p>Cities have historically been prohibited from imposing a license, franchise, or privilege tax on certain utility-related businesses, such as telecommunications, video programming, and electricity. With the repeal of G.S. 160A-211, effective July 1, 2015, the specific prohibition language would also be repealed.</p> <p>While cities only have the power to tax or charge a fee to the extent the legislature has granted them the authority to do so, and the repeal of this prohibition is not necessarily a grant of authority otherwise, the utilities industry has concerns about the deletion of the prohibition as it relates to rights-of way and has requested that the language be kept in the statutes. This section recodifies the language in a more appropriate place in the statutes.</p>
21	<p>S.L.2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. A portion of both of the repealed taxes was shared with the cities. The tax-sharing revenue under the repealed taxes was replaced with a distribution of part of the sales tax on electricity and piped natural gas. This section clarifies that funds from the sales tax may be used for the final distribution of the repealed franchise tax on electricity and repealed excise tax on piped natural gas.</p>

² Generally speaking, there is a time limit within which a taxpayer may file a claim for refund. If the claim for refund is not timely filed, it will be barred. The Department has administratively allowed for a taxpayer in these circumstances to file a timely but incomplete claim for refund, known as a "protective refund claim," and then later perfect the claim when the essential information becomes available.

22 ³	<p>This section clarifies what the term "net General Fund tax collected for a fiscal year" means for purposes of the corporate income tax rate trigger in G.S. 105-130.3C. Last session, the General Assembly reduced the corporate income tax rate from 6.9% to 6% for the 2014 taxable year and to 5% for the 2015 taxable year. In addition to these rate reductions, the law provides for a potential 1% rate reduction for taxable year 2016 if net General Fund tax collections for fiscal year 2014-15 meet the statutory target amount of \$20,200,000,000 and a potential 1% rate reduction for taxable year 2017 if net General Fund tax collections for fiscal year 2015-16 meet the statutory target amount of \$20,975,000,000.</p> <p>To see whether or not the targeted collection amount has been met, the current law uses the amount reported by the State Controller in the State's Comprehensive Annual Financial Report. This report contains several different reports, and none of the reports necessarily reflect the collections used by the General Assembly and the Appropriations Committees when Fiscal Research Division prepares the budget availability statement for a fiscal year. The number most commonly used by the legislature when it begins budget discussions is the amount reported by the Department of Revenue. This section clarifies that net General Fund tax collected for a fiscal year means the amount of net revenue reported by the Department of Revenue's June Statement of Collection as "Total General Fund Revenue" for the 12-month period that ended the previous June 30, modified as follows:</p> <ul style="list-style-type: none"> • Less any large one-time, nonrecurring revenue • Adjusted by any changes in net collections resulting from suspension or termination of transfers out of the General Fund.
23	<p>This section conforms to federal law, and codifies the current practice, of providing the same standard deduction amount for a surviving spouse as for a married couple filing jointly. Subsections (a) and (b) make the necessary changes to the tax statutes effective for taxable years beginning on or after January 1, 2014. Subsections (c) and (d) make the same change for taxable years 2012 and 2013. When North Carolina used federal taxable income as its starting point, a specific reference to "surviving spouse" was not necessary because the amount of the standard deduction was automatically a part of that calculation. However, with the change in the 2012 taxable year to federal adjusted gross income, this conforming provision was inadvertently omitted.</p>
24 ⁴	<p>S.L. 2013-316 increased the State sales tax rate on manufactured and modular homes from 2% with a \$300 cap and 2.5% respectively, to 4.5%, effective January 1, 2014. In response to industry concerns, the Revenue Laws Study Committee expressed a desire that manufactured and modular homes be taxed as similarly as possible to a stick built home. The industry states that the average material cost in a factory-built home is approximately 50% of the invoice price. The Revenue Laws Study Committee recommended that the tax be imposed on ½ of the price of the home by exempting 50% of the sales price from sales tax.</p> <p>The provision becomes effective October 1, 2014.</p>

³ Same as provision in Section 37.1 of Senate Bill 744, the 2014 budget bill.

⁴ Substantially the same as passed by the House in House Bill 1050 on May 21st; and in Senate Bill 744 on June 11th.

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25	This section removes a reference to a repealed statute, and incorporates the definition that was referenced in the repealed statute.
26	Except as otherwise provided, the bill is effective when it becomes law.